

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	(Chapter 11)
	§	
DEEP MARINE HOLDINGS, INC. et al.	§	Jointly Administered Under
Debtors	§	Case No. 09-39313-H1-11
John D. Bittner, Liquidating Trustee	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. Proc. No. 10-3312
	§	
Nasser Kazeminy,	§	
NJK Holding, Corp.,	§	
DCC Ventures, LLC,	§	
Otto B. Candies, Jr.,	§	
Otto B. Candies, III,	§	
Otto Candies, LLC, and	§	
Candies Shipbuilders, LLC	§	
	§	
Defendants,	§	
	§	
and	§	
	§	
Deep Marine Holdings, Inc. and	§	
Deep Marine Technologies, Inc.,	§	
	§	
Nominal Defendants/Debtors.	§	

**DECLARATION OF MARK L. MATHIE IN SUPPORT OF TRUSTEE'S RESPONSE
TO MOTION OF DEFENDANTS TO DISMISS COMPLAINT AND/OR STRIKE
PLEADINGS AS SANCTION FOR VIOLATION OF FED. R. BANKR. P. 9011 AND FOR
IMPOSITION OF MONETARY SANCTIONS (Docket 18)**

I, Mark L. Mathie, declare:

1. I am an attorney admitted to practice before this Court. I am over twenty-one and competent to testify. I am also a partner at McKool Smith, P.C., which is counsel for the Trustee

in this case. My testimony below is based on my personal knowledge, the facts reported to me by others with knowledge, and review of the documents.

2. Immediately on creation of the Liquidating Trust (July 9, 2010), McKool Smith began representing John Bittner in his capacity as Trustee.

3. During its pre-filing investigation, McKool Smith performed various tasks, including, among other things:

- McKool Smith collected documents from various sources
- McKool Smith created databases to house, organize, and review the documents
- McKool Smith created indices, timelines, charts, and other summaries
- McKool Smith reviewed and summarized deposition transcripts
- McKool Smith reviewed pleadings and proofs of claims
- McKool Smith reviewed documents made available by Bracewell & Guillian
- McKool Smith reviewed documents provided by the Trustee
- McKool Smith interviewed GE's counsel
- McKool Smith interviewed Mr. McKim's counsel
- McKool Smith met with the Trustee on several occasions
- McKool Smith exchanged drafts of the Trustee's Complaint prior to filing
- McKool Smith conducted several conferences with the Trustee on various issues
- McKool Smith conducted research on various legal theories and causes of action
- McKool Smith reviewed the SLC Report carefully
- McKool Smith investigated the ties between the SLC and Defendants
- McKool Smith investigated the ties between Greenberg Traurig and Defendants

4. On August 11, 2010, Defendants served by hand the Trustee and Trustee's counsel a Rule 9011 letter ("Rule 11 letter"). Neither the Trustee nor the Trustee's counsel sent a response in writing or orally to any specific issue addressed in Defendants' Rule 11 letter. Thus, there was no intervening event that obviated Defendants' need to comply with the 21-day safe-harbor provision in Rule 9011(c)(2).

5. Defendants' Rule 11 letter attached a draft of a Rule 9011 motion, which Defendants presented to the Court on August 17, 2010, as an attachment to their Motion for Extension of Time. (Dkt. No. 9)

6. On September 7, 2010, Defendants served and filed the Motion of Defendants to Dismiss Complaint and/or Strike Pleadings as Sanction for Violation of FED. R. BANKR. P. 9011 and for Imposition of Monetary Sanctions. (Dkt No. 18) This was the first time that Defendants had presented to the Trustee and his counsel the Rule 11 Motion currently before the Court. (Dkt No. 18)

7. Attached hereto as ***Exhibit A*** is a true and correct copy of July 31, 2007 DMT Press Release.

8. Attached hereto as ***Exhibit B*** is a true and correct copy produced by Greenberg Traurig of May 31, 2008 Shareholder Allocation Chart.

9. Attached hereto as ***Exhibit C*** is a true and correct copy produced by Greenberg Traurig of July 30, 2008 Letter to Employees of DMT from Nasser Kazeminy.

10. Attached hereto as ***Exhibit D*** is a true and correct copy of Excerpts from Wade Abadie's February 4, 2010 Deposition Testimony pages 37-40 in *In re Deep Marine Holdings*, Case No. 09-3913, United States Bankruptcy Court for the Southern District of Texas, Houston Division.

11. Attached hereto as ***Exhibit E*** is a true and correct copy of October 10, 2008 Shareholder Demand Letter produced by Greenberg Traurig from Anthony Paduano to Bruce Gilman, Larry Lenig, Paul McKim, Daniel Ericksen, and John Ellingboe.

12. Attached hereto as ***Exhibit F*** is a true and correct copy produced by Greenberg Traurig of October 3, 2008 DMT Written Action of Sole Shareholder.

13. Attached hereto as ***Exhibit G*** is a true and correct copy produced by Greenberg Traurig of October 3, 2008 DMH Written Action of Directors electing Daniel Erickson, Eugene DePalma, and Francis Wade Abadie, Jr. to the Board.

14. Attached hereto as ***Exhibit H*** is a true and correct copy produced by Greenberg Traurig of October 3, 2008 DMH Written Action of Directors electing Otto Candies, III to the board.

15. Attached hereto as ***Exhibit I*** is a true and correct copy produced by Greenberg Traurig of October 13, 2008 DMH Board of Directors Meeting Minutes.

16. Attached hereto as ***Exhibit J*** is a true and correct copy produced by Greenberg Traurig of May 5, 2006 letters to Bruce Gilman and Larry Lenig from Nasser J. Kazeminy.

17. Attached hereto as ***Exhibit K*** is a true and correct copy obtained from the internet by McKool Smith personnel at my direction of the ComVest Group Bio for Larry E. Lenig.

18. Attached hereto as ***Exhibit L*** is a true and correct copy of Appendix A produced by Greenberg Traurig to Final Investigatory Report Findings Regarding Allegations in Complaint.

19. Attached hereto as ***Exhibit M*** is a true and correct copy obtained from the internet by McKool Smith personnel at my direction of the ComVest Bio for Nasser J. Kazeminy.

20. Attached hereto as ***Exhibit N*** is a true and correct copy obtained from the internet by McKool Smith personnel at my direction of the ComVest Group Internet Homepage (www.comvest.com).

21. Attached hereto as ***Exhibit O*** is a true and correct copy produced by Greenberg Traurig of Chart of Relationships with Nasser J. Kazeminy.

22. Attached hereto as ***Exhibit P*** is a true and correct copy obtained from the internet by McKool Smith personnel at my direction of Sept. 9 Catalyst International Press Release (www.prnewswire.com/cgi-bin/stories).

23. Attached hereto as **Exhibit Q** is a true and correct copy obtained from the internet by McKool Smith personnel at my direction of March 4, 2005 Business Times Article, "Commerce One Rises from Dot-Ashes" (<http://eastbay.bizjournals.com/eastybay/stories/2005/03/07/story1.html>).

24. Attached hereto as **Exhibit R** is a true and correct copy produced by Greenberg Traurig of June 25, 2009 Final Report of Special Investigatory and Litigation Counsel.

25. Attached hereto as **Exhibit S** is a true and correct copy obtained from the internet by McKool Smith personnel at my direction of Kenneth A. Gerasimovich Biography (www.greenbergtraurig.com).

26. Attached hereto as **Exhibit T** is a true and correct copy obtained from the internet by McKool Smith personnel at my direction of October 6, 2004 Asset Purchase Agreement between Commerce One, Inc., Commerce One Operations, Inc., and Commerce Acquisition LLC, and ComVest Investment Partners II, LLC, and DCC Ventures, LLC.

27. Attached hereto as **Exhibit U** is a true and correct obtained from the internet by McKool Smith personnel at my direction copy of Brian K. Gart Bioraphy (www.bergersingerman.com).

28. Attached hereto as **Exhibit V** is a true and correct copy produced by Greenberg Traurig of October 16, 2008 Letter from Bruce Gilman to Patricia Rodriguez regarding Board Resignations.

29. Attached hereto as **Exhibit W** is a true and correct copy produced by Greenberg Traurig of October 31, 2008 DMH Written Consent of Stockholders removing Paul McKim as director of DMH.

30. Attached hereto as **Exhibit X** is a true and correct copy produced by Greenberg Traurig of April 21, 2009 Order in *FLI Deep Marine v. McKim, et. al.* CA. No. 4138-VCN, Court of Chancery of the State of Delaware.

31. Attached hereto as **Exhibit Y** is a true and correct copy produced by Greenberg Traurig of July 3, 2009 Email Chain between Larry Lenig, Bruce Gilman, James Wilson, K.B. Battaglini, Chip Rainey, and G. Harrison regarding DMH short form merger.

32. Attached hereto as **Exhibit Z** is a true and correct copy of August 3, 2009 Amended Motion to Dismiss in *McKim v. Kazeminy, et al.*, Cause No. 2008-64385, 129th Judicial District Court, Harris County, Texas.

33. Attached hereto as **Exhibit AA** is a true and correct copy of August 14, 2009 Order Granting the Amended Motion to Dismiss in *McKim v. Kazeminy, et al.*, Cause No. 2008-64385, 129th Judicial District Court, Harris County, Texas.

34. Attached hereto as **Exhibit BB** is a true and correct copy of November 2, 2009 Office Conference Transcript in *FLI Deep Marine v. McKim, et al.*, CA. No. 5020-VCS, Court of Chancery of the State of Delaware.

35. Attached hereto as **Exhibit CC** is a true and correct copy of August 11, 2010 Letter received by my office from Thomas S. Henderson to Hugh M. Ray, III attaching draft Motion to Dismiss.

36. Attached hereto as **Exhibit DD** is a true and correct copy of August 18, 2010 Letter sent from my office from Hugh M. Ray, III to Robert R. Weinstine regarding Rule 11 threats.

37. Attached hereto as ***Exhibit EE*** is a true and correct copy of a Redline Comparison of Defendants' Rule 11 Motion attached to the Rule 11 Letter and Rule 11 Motion Filed with this Court.

38. Attached hereto as ***Exhibit FF*** is a true and correct copy of October 26, 2009 Affidavit of Katherine B. Harrison in *FLI Deep Marine v. McKim, et al.*, Court of Chancery of the State of Delaware.

39. Attached hereto as ***Exhibit GG*** is a true and correct copy of October 15, 2008 Letter from Robert R. Weinstine to Katherine B. Harrison regarding Shareholder Demand Letter and threats of litigation.

40. Attached hereto as ***Exhibit HH*** is a true and correct copy of October 2, 2009 Nasser Kazeminy's Motion for Sanctions Against Plaintiff in *McKim v. Kazeminy, et al.*, Cause No. 2008-64385, 129th Judicial District Court, Harris County, Texas.

41. Attached hereto as ***Exhibit II*** is a true and correct copy of August 17, 2010 Letter received by my office from Robert R. Weinstine to Hugh M. Ray, III regarding threat of State Bar grievance.

42. Attached hereto as ***Exhibit JJ*** is a true and correct copy produced by Greenberg Traurig of August 25, 2004 Otto Candies, LLC Blanket Time Charter between Otto Candies, LLC and Deep Marine Technology.

43. Attached hereto as ***Exhibit KK*** is a true and correct copy produced by Greenberg Traurig of October 25, 2006 Letter from Otto Candies, LLC to Paul McKim regarding Mother Theresa Blanket Time Charter Agreement.

44. Attached hereto as ***Exhibit LL*** is a true and correct copy produced by Greenberg Traurig of November 16, 2006 Letter from Paul A. McKim to Paul Candies regarding Mother Theresa Blanket Time Charter Agreement.

45. Attached hereto as ***Exhibit MM*** is a true and correct copy produced by Greenberg Traurig of January 17, 2007 Letter from Paul Candies to Paul McKim regarding Mother Theresa Time Charter Agreement.

46. Attached hereto as ***Exhibit NN*** is a true and correct copy produced by Greenberg Traurig of February 2, 2007 Letter from Paul A. McKim to Paul Candies regarding Mother Theresa Time Charter Agreement.

47. Attached hereto as ***Exhibit OO*** is a true and correct copy produced by Greenberg Traurig of October 26, 2004 Minutes of Special Shareholders' Meeting of DMT electing Nasser Kazeminy as a director.

48. Attached hereto as ***Exhibit PP*** is a true and correct copy produced by Greenberg Traurig of December 16, 2004 DMT Board of Directors Meeting electing John Ellingboe as Chairman of the Board.

49. Attached hereto as ***Exhibit QQ*** is a true and correct copy of Excerpts from Paul McKim's April 7, 2009 Deposition Testimony pages 209-212 in *Deep Marine Holdings v. McKim*, Case No. 2008-65512, 129th Judicial District, Harris County, Texas.

50. Attached hereto as ***Exhibit RR*** is a true and correct copy of Excerpts from B.J. Thomas' March 19, 2009 Deposition Testimony pages 62-65 in *Deep Marine Holdings v. McKim*, Case No. 2008-65512, 129th Judicial District, Harris County, Texas.

51. Attached hereto as ***Exhibit SS*** is a true and correct copy of Excepts from B.J. Thomas' March 19, 2009 Deposition Testimony pages 102-105 in *Deep Marine Holdings v. McKim*, Case No. 2008-65512, 129th Judicial District, Harris County, Texas.

52. Attached hereto as ***Exhibit TT*** is a true and correct copy produced by Greenberg Traurig of Appendix B to Final Investigatory Report Findings Regarding Allegations in Complaint.

53. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of October, 2010, in Dallas, Texas.

/s/ Mark Mathie
MARK L. MATHIE